

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2003-336-C - ORDER NO. 2004-102
MARCH 12, 2004

IN RE: Application of VerteX Communications, Inc.) ORDER
for a Certificate of Public Convenience and) GRANTING
Necessity to Provide Competitive Prepaid) APPLICATION
Local Exchange Services in the State of South)
Carolina)

This matter comes before the Public Service Commission of South Carolina (the “Commission”) by way of the Application of VerteX Communications, Inc. (“VerteX” or the “Company”) requesting a Certificate of Public Convenience and Necessity authorizing it to provide telecommunications services between and among locations within the State of South Carolina as a reseller and facilities based provider of local exchange telecommunications. The Company’s Application was filed pursuant to S.C. Code Ann. §58-9-280 (Supp. 2003) and the Regulations of the Public Service Commission of South Carolina. By its Application, VerteX also requested a flexible rate structure for its local exchange service offerings consistent with the principles and procedures set forth in Commission Order No. 98-165 in Docket No. 97-467-C.

VerteX requested in its Application that it be granted a waiver of the requirements that it publish a telephone directory under 26 S.C. Code Ann. Regs. 103-631 and the requirement that it file a service area map with the Commission under 26 S.C. Code Ann. Regs. 103-612.2.3. Finally, VerteX requests a waiver of the requirement that it maintain

its books and records in conformance with the Uniform System of Accounts (USOA) and requests that it alternatively be permitted to maintain its books of accounts in accordance with Generally Accepted Accounting Principles (GAAP).

The Commission's Executive Director instructed VerteX to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the affected areas. The purpose of the Notice of Filing was to inform interested parties of VerteX's Application and of the manner and time in which to file the appropriate pleadings for participation in the proceeding. VerteX complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. The South Carolina Telephone Coalition ("SCTC") filed a Petition to Intervene in this matter. Prior to a hearing being held in this matter, VerteX and the SCTC entered into a Stipulation on January 20, 2004, and filed with this Commission on January 30, 2004, which is incorporated in this Order as detailed below.

A hearing was convened on February 18, 2004, at 2:30 p.m. in the Commission's Hearing Room at 101 Executive Center Drive, Columbia, South Carolina. The Honorable Mignon Clyburn, Chairman, presided. VerteX was represented by John J. Pringle, Esquire. Jocelyn Boyd, Staff Counsel, represented the Commission Staff.

William B. Saxon, President of VerteX, appeared and testified in support of the Application. The record reveals that VerteX is a South Carolina corporation which is headquartered in Walhalla, South Carolina. According to Mr. Saxon, VerteX seeks authority to offer on a resale basis within South Carolina, local exchange telecommunications services. Mr. Saxon further testified that VerteX was seeking

authority from the Commission to provide facilities based and resold competitive local exchange telecommunications throughout the State of South Carolina in the areas served by BellSouth Telecommunications, Inc. Mr. Saxon further testified that VerteX would offer its local services on both a standard and prepaid basis to residential customers which otherwise may be unable to obtain local telephone service. VerteX does not intend to install any transmission or switching facilities in South Carolina and will engage in “switchless” resale of services. Mr. Saxon explained the Company’s request for authority and the record reveals the Company’s services, operations, and marketing procedures.

Mr. Saxon also testified regarding VerteX’s technical, financial, and managerial resources to provide the services for which it seeks authority to provide. Mr. Saxon offered that he has worked as an agent for numerous CLECs in South Carolina for several years and is the owner of several business in the Upstate of South Carolina, including Bill’s Rent to Own, a Budget truck rental franchise and a check cashing business. Other members of the VerteX management team include Denver Alexander who worked as District Manager of Talon Communications for six years and Director of Satellite Services for OneTone Communications for four years. Other Corporate Officers, including Mr. Paul Nalley and Mr. Seth Chea, also have numerous years experience in the communications industry. Finally, Mr. Saxon testified that VerteX will operate in accordance with Commission rules, regulations, guidelines, and Commission Orders.

Mr. Saxon also offered that approval of VerteX’s Application would serve the public interest by allowing customers to obtain very competitive rates and services, by

promoting efficient use of the underlying network, by increasing access revenues for underlying carriers, and by increasing tax revenue for the State of South Carolina.

Finally, VerteX requested that it be exempt from any record-keeping rules or requirements that the Company be required to maintain its financial records in conformance with the Uniform System of Accounts (USOA). Mr. Saxon testified that it utilizes the Generally Accepted Accounting Principles (GAAP) and that the Commission will therefore have a reliable means by which to evaluate the operations. He further requested that VerteX be exempt from any requirements that the Company publish and distribute telephone directories under Regulation 103-631 and service area maps. VerteX will make arrangements with the incumbent ILECs whereby the names of its customers will be included in the directories published by the ILEC and these directories distributed to VerteX customers.

After full consideration of the applicable law, the Company's Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

FINDINGS OF FACT

1. We find that VerteX is organized and registered as a corporation under the laws of the State of South Carolina with the South Carolina Secretary of State and is headquartered in Walhalla, South Carolina.

2. We find that VerteX intends to operate as a reseller and facilities based provider of local telecommunications services and wishes to provide its services in South Carolina.

3. We find that VerteX has the experience, capability, and financial resources to provide the services as described in its Application. S.C. Code Ann. Section 58-9-280(B)(1) (Supp. 2003)

4. We find that VerteX will support universally available telephone service at affordable rates. S.C. Code Ann. Section 58-9-280(B)(4) (Supp. 2003).

5. The Commission finds that VerteX's provision of service will not adversely impact the availability of affordable local exchange service. S.C. Code Ann. Section 58-9-280 (B)(3) (Supp. 2003).

6. We find that VerteX will provide services which will meet the service standards of the Commission. S.C. Code Ann. Section 58-9-280(B)(2) (Supp. 2003).

7. The Commission finds that the provision of local exchange service by VerteX "does not adversely impact the public interest. S.C. Code Ann. Section 58-9-280(B)(5) (Supp. 2003).

8. We find that VerteX is entitled to and qualifies for a flexible rate structure in accordance with the principles and procedures established for NewSouth Communications by Commission Order No. 98-165 in Docket No. 97-467-C.

9. We find that the issuance of the authority requested by VerteX is in the best interest of the citizens of the State of South Carolina.

CONCLUSIONS OF LAW

1. The Commission concludes that VerteX possesses the managerial, technical, and financial resources to provide the competitive local exchange telecommunications services as described in its Application.

2. The Commission concludes that VerteX's "provision of service will not adversely impact the availability of affordable local exchange service."

3. The Commission concludes that VerteX will participate in the support of universally available telephone service at affordable rates to the extent that VerteX may be required to do so by the Commission.

4. The Commission concludes that VerteX will provide services which will meet the service standards of the Commission.

5. The Commission concludes that approval of VerteX's Application to provide local exchange telecommunications services in South Carolina will serve the public interest by enhancing competition in the State of South Carolina by offering additional service offerings to South Carolina's consumers and by providing for efficient use of existing telecommunications resources.

6. The Commission concludes that the provision of local exchange service by VerteX will not otherwise adversely impact the public interest.

7. The Commission concludes that the issuance of authority to provide local exchange telecommunications services as requested by Vertex, and as set forth in its Application, is in the best interests of the citizens of the State of South Carolina.

8. The Commission concludes that a Certificate of Public Convenience and Necessity should be granted to VerteX to provide competitive intrastate local exchange telecommunications services, including optional features, through resale or through the deployment of its own facilities or the use of UNE-P leased from underlying carriers.

9. The Commission concludes that a Certificate of Public Convenience and Necessity should be granted to VerteX to provide competitive resold and facilities-based intrastate local exchange services only to customers located in the non-rural areas of the state. The terms of the stipulation between VerteX and SCTC are approved, and adopted as a part of this Order and is attached hereto as Order Exhibit 1. Any future proposal by VerteX to provide local telecommunications service to rural areas is subject to the terms of this stipulation.

10. The Commission concludes that VerteX's local telecommunications services shall be regulated in accordance with the principles and procedures established for flexible regulation first granted to New South Communications in Commission Order No. 98-165, Docket No. 97-467-C. The Commission adopts for VerteX's competitive intrastate local exchange services a rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels that will have been previously approved by the Commission. Further, VerteX's local exchange service filings are presumed valid upon filing, subject to the Commission's right within thirty (30) days to institute an investigation of the tariff filing, in which case the tariff filings will be subject to the same monitoring process as similarly situated competitive local exchange carriers.

11. The Commission concludes that the terms of the Stipulation between VerteX and the SCTC are approved and adopted as a part of this Order. Any proposal to provide such service to rural service area is subject to the terms of the Stipulation.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

1. A Certificate of Public Convenience and Necessity is granted to VerteX to provide resold or facilities-based competitive intrastate local exchange telecommunications services, including optional services. VerteX's local exchange service offerings shall be provided in compliance with the Stipulation between VerteX and the SCTC.

2. The terms of the Stipulation between VerteX and the SCTC are approved, and adopted as a part of this Order. (The Stipulation is attached to this Order as Order Exhibit 1 and is hereby incorporated as a part of this Order.) Any proposal to provide competitive intrastate local exchange telecommunications service to rural service areas is subject to the terms of the Stipulation.

3. VerteX shall file, prior to offering local exchange services in South Carolina, its final tariff of its local service offerings conforming to all matters discussed with Staff and comporting with South Carolina law in all matters. VerteX's local telecommunications services shall be regulated in accordance with the principles and procedures established for flexible regulation first granted to NewSouth Communications by Order No. 98-165 in Docket No. 97-467-C. Specifically, the Commission adopts for VerteX's competitive intrastate local exchange services a rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels that will have been previously approved by the Commission. Further, VerteX's local exchange service tariff filings are presumed valid upon filing, subject to the Commission's right within thirty (30) days to institute an investigation of the tariff filing,

in which case the tariff filing would be suspended pending further Order of the Commission. Further, any such tariff filings will be subject to the same monitoring process as similarly situated competitive local exchange carriers.

4. VerteX shall resell the services of only those LECs authorized to do business in South Carolina by this Commission. If VerteX changes underlying carriers, it shall notify the Commission in writing.

5. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours. VerteX shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The Company shall utilize the “Authorized Utility Representative Information” form which can be located on the Commission’s website at www.psc.state.sc.us/reference/forms.asp to file the names of these representatives with the Commission. Further, the Company shall promptly notify the Commission in writing if the representatives are replaced.

6. VerteX shall conduct its business in compliance with Commission decisions and Orders, both past and future, including but not limited to, any and all Commission decisions which may be rendered in Docket No. 96-018-C regarding local competition.

7. Title 23, Chapter 47, South Carolina Code of Laws Ann., governs the establishment and implementation of a “Public Safety Communications Center,” which is more commonly known as a “911 system” or “911 service.” Services available through a 911 system include law enforcement, fire, and emergency medical services. In recognition of the necessity of quality 911 services being provided to the citizens of South Carolina, the Commission hereby instructs VerteX to contact the appropriate authorities regarding 911 service in the counties and cities where the Company will be operating. Contact with the appropriate authorities is to be made before providing voice or dial tone telephone service in South Carolina. Accompanying this Order is an information packet from the South Carolina Chapter of the National Emergency Number Association (“SC NENA”) with contact information and sample forms. The Company may also obtain information by contacting the E911 Coordinator at the Office of Information Resources of the South Carolina Budget and Control Board. By this Order and prior to providing voice or dial-tone services within South Carolina, VerteX shall contact the 911 Coordinator in each county, as well as the 911 Coordinator in each city where the city has its own 911 system, and shall provide information regarding the Company’s operations as required by the 911 system.

8. The Company is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

9. VerteX shall file annual financial information in the form of annual reports and gross receipts reports as required by the Commission. The annual report and the gross receipts reports will necessitate the filing of intrastate information. Therefore,

VerteX shall keep financial records on an intrastate basis for South Carolina in order to comply with the Commission's requirements of filing an annual report and a gross receipts report. The proper form for filing annual financial information for the annual report may be found on the Commission's website at www.psc.state.sc.us/reference/forms.asp. The title of this form is "Annual Report for CLECs" and/or "Annual Report for Interexchange Companies." The Company shall file the annual report form with the Commission by April 1st of each year.

Commission gross receipts forms are due to be filed with the Commission no later than August 31st of each year. The appropriate form for remitting information for gross receipts is entitled "Gross Receipts Form for Utility Companies" and may also be found on the Commission's website at www.psc.state.sc.us/reference/forms.asp.

Additionally, pursuant to the Commission's regulations, the Company shall file a "CLEC Service Quality Quarterly Report" with the Commission. The proper form for this report can be found on the Commission's website at www.psc.state.sc.us/reference/forms.asp. These "CLEC Service Quality Quarterly Reports" are required to be filed within 30 days of the end of each calendar quarter.

10. The Federal Communications Commission ("FCC") in July of 2000 required all telecommunications carriers throughout the United States to implement three-digit, 711, dialing for access to all Telecommunications Relay Services (TRS). The Commission issued a memorandum in March of 2001 instructing all South Carolina telecommunications carriers to implement the service completely by October of 2001. All competitive local exchange carriers (CLECs) and incumbent local exchange carriers

(ILECs) were instructed to include language in their tariffs introducing 711 as a new service offering with deployment by July 1, 2002, and to translate 711 dialed calls to 1-800-735-2905. All Payphone Service Providers (PSPs) were instructed to modify their programmable phones to translate calls dialed as 711 to their assigned TRS toll free number 1-800-735-2905 in order to route 711 calls to the TRS provider before October 1, 2001. Additionally, telephone directories were required to be updated, and bill inserts promoting 711 were also required. This Company must comply with these mandates as applicable. Complete information on compliance with this FCC and Commission requirement may be found on the Commission's website at www.psc.state.sc.us/reference/forms.asp.

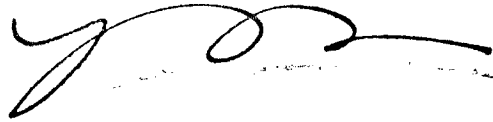
11. For good cause shown, VerteX is granted a waiver and is hereby authorized to keep its books and financial records in accordance with Generally Accepted Accounting Principles rather than the Uniform System of Accounts method.

12. For good cause shown, VerteX is granted a waiver of the requirements that the Company publish and distribute a directory under 26 S.C. Code Ann. Regs. 103-631. VerteX is ordered to contact the incumbent ILECs to ensure that the Company's customers are included in the applicable directory.

13. For good cause shown, VerteX is granted a waiver of the requirement that it file maps of exchange service areas under 26 S.C. Ann. Regs. 103-612.2.3.

14. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Mignon L. Clyburn, Chairman

ATTEST:



Bruce F. Baker, Executive Director

(SEAL)

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

FILED 2004 MAR 12 PM 1:10
J. W. 120 02111

Docket No. 2003-336-C

Re: Application of VerteX Communications, Inc.)
for a Certificate of Public Convenience and)
Necessity to Provide Prepaid Local Exchange)
Telecommunications Services in the State of)
South Carolina)

STIPULATION

The South Carolina Telephone Coalition ("SCTC") (see attachment "A" for list of companies) and VerteX Communications, Inc. ("VerteX") hereby enter into the following stipulations. As a consequence of these stipulations and conditions, SCTC does not oppose VerteX's Application. SCTC and VerteX stipulate and agree as follows:

1. SCTC does not oppose the granting of a statewide Certificate of Public Convenience and Necessity to VerteX, provided the South Carolina Public Service Commission ("Commission") makes the necessary findings to justify granting of such a certificate, and provided the conditions contained within this stipulation are met.

2. VerteX stipulates and agrees that any Certificate which may be granted will authorize VerteX to provide service only to customers located in non-rural local exchange company ("LEC") service areas of South Carolina, except as provided herein.

3. VerteX stipulates that it is not asking the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas.

4. VerteX stipulates and agrees that it will not provide any local service, by its own facilities or otherwise, to any customer located in a rural incumbent LEC's service area, unless and

until VerteX provides such rural incumbent LEC and the Commission with written notice of its intent to do so at least thirty (30) days prior to the date of the intended service. During such notice period, the rural incumbent LEC will have the opportunity to petition the Commission to exercise all rights afforded it under Federal and State law. Also, VerteX acknowledges that the Commission may suspend the intended date for service in rural LEC territory for ninety (90) days while the Commission conducts any proceeding incident to the Petition or upon the Commission's own Motion, provided that the Commission can further suspend the implementation date upon showing of good cause.

5. VerteX stipulates and agrees that, if VerteX gives notice that it intends to serve a customer located in a rural incumbent LEC's service area, and either (a) the Commission receives a Petition from the rural incumbent LEC to exercise its rights under Federal or State law within such 30-day period, or (b) the Commission institutes a proceeding of its own, then VerteX will not provide service to any customer located within the service area in question without prior and further Commission approval.

6. VerteX acknowledges that any right which it may have or acquire to serve a rural telephone company service area in South Carolina is subject to the conditions contained herein, and to any future policies, procedures, and guidelines relevant to such proposed service which the Commission may implement, so long as such policies, procedures, and guidelines do not conflict with Federal or State law.

7. The parties stipulate and agree that all rights under Federal and State law are reserved to the rural incumbent LECs and VerteX, and this Stipulation in no way suspends or adversely affects such rights, including any exemptions, suspensions, or modifications to which they may be entitled.


8. VerteX agrees to abide by all State and Federal laws and to participate, to the extent it

may be required to do so by the Commission, in the support of universally available telephone service at affordable rates.

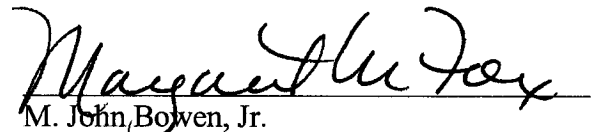
9. VerteX hereby amends its application and its prefiled testimony in this docket to the extent necessary to conform with this Stipulation.

AGREED AND STIPULATED to this 20th day of January,
2004.

VerteX Communications, Inc.:

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South Carolina Telephone Coalition:

_____

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Attorneys for the South Carolina Telephone
Coalition

ATTACHMENT A

South Carolina Telephone Coalition Member Companies for Purposes of Local Service Stipulation

ALLTEL South Carolina, Inc.
Chesnee Telephone Company
Chester Telephone Company
Farmers Telephone Cooperative, Inc.
Ft. Mill Telephone Company
Home Telephone Company, Inc.
Lancaster Telephone Company
Lockhart Telephone Company
McClellanville Telephone Company
Norway Telephone Company
Palmetto Rural Telephone Cooperative, Inc.
Piedmont Rural Telephone Cooperative, Inc.
Pond Branch Telephone Company
Ridgeway Telephone Company
Rock Hill Telephone Company
Sandhill Telephone Cooperative, Inc.
St. Stephen Telephone Company
West Carolina Rural Telephone Cooperative, Inc.
Williston Telephone Company